Analysis: Mauritius – United Kingdom Income Treaty

See treaty text
Type of treaty: Income
Based on the OECD Model Treaty
Signed: February 11, 1981
Entry into force: October 19, 1981
Effective date: July 1, 1981. See Article 30.
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Article 1 Personal Scope

See treaty text
Persons who are residents of one or both States.

Article 2 Taxes Covered

See treaty text
UK
The income tax
The corporation tax; and
The capital gains tax
Mauritius
The income tax
The capital gains tax (morcellement);
Mauritius' treaties cover only income tax imposed primarily under the Income Tax Act of 1995, as amended. Social security payments, as well as indirect taxes (such as customs and excise duties on imports, and taxes on consumption or property) are generally not covered by Mauritius' treaties. Although capital gains tax is also listed as covered by the treaty, Mauritius has since the conclusion of the treaty abolished the existing tax on such gains.

Article 3 General Definitions

See treaty text
"United Kingdom": Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which, in accordance with international law is designated, under the laws of the United Kingdom concerning the continental shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
"Mauritius": all the territories, including all the islands, which, in accordance with the laws of Mauritius, constitute the State of Mauritius, including:
• the territorial sea of Mauritius; and

• any area outside the territorial sea of Mauritius which in accordance with international law is designated, under the laws of Mauritius concerning the continental shelf, as an area within which the rights of Mauritius with respect to the sea bed and sub-soil and their natural resources may be exercised.

"A Contracting State" and "the other Contracting State": Mauritius or United Kingdom, as the context requires;
"Person": an individual, a company and any other body of persons corporate or not corporate;
"National":
• in the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided that in either case he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;

• in Mauritius, any individual who is a citizen of Mauritius and any legal person, partnership, association or other entity deriving its status as such from the law in force in Mauritius.

"Company": any body corporate or any entity that is treated as a company or body corporate for tax purposes;
"Enterprise of a Contracting State" and "enterprise of the other Contracting State": respectively an industrial, mining, commercial, plantation or agricultural enterprise or similar undertaking carried on

by a resident of a Contracting State and an industrial, mining, commercial, plantation or agricultural enterprise or similar undertaking carried on by a resident of the other Contracting State."
"International traffic": transport by a ship or aircraft operated by an enterprise having its place of effective management in a Contracting State, but not when the ship or aircraft is operated solely between places in the other Contracting State;
"Tax": United Kingdom tax or Mauritius tax as the context requires;
"Competent authority": in United Kingdom: the Commissioners of Inland Revenue or their authorised representative;
in Mauritius: the Commissioner of Income Tax or his authorised representative.

Article 4 Resident

See treaty text

Mauritius

INDIVIDUALS

Individuals resident in Mauritius are taxed on their worldwide income. However, certain specific exemptions from tax are provided under the Income Tax Act.

An individual is treated for tax purposes as being resident in Mauritius in a particular tax year if the individual:

- has his/her domicile in Mauritius, but not if his/her permanent place of abode is outside Mauritius;
- is present in Mauritius in that year for 183 days or more; or
- is present in Mauritius in that year and the 2 preceding years for 270 days or more.

CORPORATIONS

A company is treated under Mauritian income tax law as resident in Mauritius if it is incorporated in Mauritius or has its central management and control in Mauritius. However, a company that has been issued with a Category 2 Global Business Licence (GBL2) under the Financial Services Act 2007 is treated as a non-resident for tax treaty purposes and will therefore not be entitled to any of the benefits provided under the treaty. GBL2 companies are licensed to carry on business only with non-residents and are generally prohibited from carrying on certain listed activities in Mauritius, including:

- banking and financial services
- holding or managing or dealing with a collective investment fund or scheme as a professional functionary
- providing registered office facilities, nominee, directorship, secretarial or other services for corporations; and
- providing trusteeship services as a form of business.

PARTNERSHIPS

A partnership (otherwise referred to as a société) is resident in Mauritius if it has its seat or siège in Mauritius, and also includes a partnership which has at least one associate or associé or gérant resident in Mauritius.

TRUSTS AND ESTATES

A trust is treated as resident in Mauritius if it is administered in Mauritius and a majority of the trustees are resident in Mauritius, or if the settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed.

UK

INDIVIDUALS

Historically, the residence of individuals for UK tax purposes has been determined by limited statutory provisions supplemented by caselaw and HMRC guidance and practice. From April 2013, however, a comprehensive statutory definition of residence will be introduced which is designed largely to replicate the existing position.

The new statutory test lays down a series of tests which, if met, will result in an individual being treated as automatically resident or non-resident, as the case may be. Thus, for example, an individual who is present in the United Kingdom for 183 days or more will be treated as resident in the UK, whilst an individual who is present in the United Kingdom for less than 46 or 16 days (depending on whether or not he was resident in the United Kingdom for one of the preceding three tax years) will

automatically be treated as resident. If the automatic tests are not satisfied, the individual's residence will be determined by looking at a combination of the number of days spent in the UK and the number of "sufficient UK ties": which look to whether the individual has connections such as work, accommodation or family in the UK.
The UK has also historically used the concept of "ordinary residence", but this is to be abolished from April 2013.
CORPORATIONS
A company is treated as resident in the United Kingdom for corporation tax purposes if it is incorporated in the UK or has its central management and control in the United Kingdom. A company that is treated as not resident in the UK for the purposes of a double tax treaty is treated as not being resident in the UK for all corporation tax purposes.
PARTNERSHIPS
Partnerships are transparent for UK tax purposes, so liability to tax on partnership profits is determined primarily by reference to whether the partner is resident in the UK, rather than where the partnership is resident.
TRUSTS
A trust will be taxable in the UK if its trustees are resident in the UK (the trustees for these purposes being treated as a single person distinct from the persons who are trustees from time to time. The trustees will be treated as resident in the UK if all the trustees are in fact UK resident, or if the at least one trustee is UK resident and the settler was resident at the time the relevant settlement was made. A trustee who acts as such in the UK through a permanent establishment in the UK will be assumed to be resident in the UK for these purposes.

Article 5 Permanent Establishment

See treaty text

For a Permanent Establishment to exist:

- There must be a place of business
- Place of business must be fixed
- Business must be conducted through fixed place

In addition to the listed illustrative examples contained in the OECD Model, the treaty also lists:

- a warehouse, in relation to a person providing storage facilities for others;
- an installation or structure used for the exploration of natural resources; and
- a farm or plantation.

Building sites, construction or assembly projects, and supervisory activities in connection therewith, constitute a permanent establishment if they last more than six months.
A fixed place of business used for a combination of preparatory or auxiliary activities is not expressly excluded from the concept of a permanent establishment.

UK

Under UK domestic law, a person who carries on a trade, profession or vocation wholly or partly in the UK is liable to income tax on the profits attributable to that trade, whether or not a permanent establishment exists. There is extensive caselaw on the question of what constitutes "trading in" (as opposed to merely "trading with") the UK. Where a tax treaty exists, it will normally override the income tax charge in the absence of a permanent establishment.
Where a company carries on a trade in the UK through a permanent establishment, the income tax charge is superseded by a charge to corporation tax. The UK domestic law definition of "permanent establishment" closely follows that in the OECD model treaty, with a few minor variations.

Mauritius

Mauritian tax law does not contain a comprehensive definition of the concept of permanent establishment, probably because that concept is not applied for purposes of subjecting to tax the Mauritian-source business profits of a non-resident. For the tests applied in such cases, see the comments below on the business profits article of the treaty.
The treaty therefore provides greater certainty and clarity consistent with the established tax treaty standard on the issue as to when a non-resident will be considered to have a presence in the country sufficient to bring it within the taxing jurisdiction of Mauritius on its business income.

Article 6 Income from Immovable Property

See treaty text

UK

Non-UK resident individuals and companies are chargeable to income tax on the profits from a UK property business, which will normally comprise rental income less any deductible expenses. Where a non-resident company's UK property business is carried on through a permanent establishment, the income tax charge is superseded by a charge to corporation tax.

Mauritius

The treaty follows the general rule of providing for the exercise of taxing rights in relation to income from immovable property by the State in which the property is situated.

However, profits derived by an agricultural, forestry or plantation enterprise are to be treated in accordance with the treaty provisions governing business profits.

The treaty goes beyond the OECD Model by extending the scope of application of the principles governing the taxation of immovable property by the State of situs to the income derived from immovable property used for the performance of independent personal services.

Article 7 Business Profits

See treaty text

Distinct and separate enterprise approach

Apportionment of total profits permitted

Adopts the UN Model provision in relation to the deduction of expenses and the use of any customary apportionment method of profit attribution.

Same profit attribution method to be used each year

The treaty adopts the distinct and separate enterprise approach to the taxation of a permanent establishment contained in the OECD Model (2008).

On other issues, the treaty generally follows the OECD Model (2008) provisions in this area, except that it includes the UN Model provision governing the deduction of expenses in computing the profits of a permament establishment and, in line with the UN Model, permits the use of an apportionment of total profits by way of profit attribution, where such methods have been customary in that state and provided the results are in accordance with the principles contained in the Article.

Mauritius

The concept of permanent establishment is not used under Mauritius' tax law for purposes of establishing the source of business income derived by a non-resident from Mauritius. However, where a non-resident who is present in Mauritius sells goods or does so through another person in Mauritius, and the goods are in Mauritius or will be brought into Mauritius for the purpose or in pursuance or consequence of the sale, the non-resident will be deemed to have sold the goods in the course of carrying on a business in Mauritius, whether or not the sale is made within or outside Mauritius. In cases where the non-resident person sells the goods through a person who is present in Mauritius, that person will be deemed to be the non-resident's agent in respect of all the income derived from the business carried on in Mauritius by the non-resident. Consequently, that person becomes liable to income tax on the income, whether or not the non-resident in fact receives the income.

Since treaties generally override domestic law, the effect of the treaty will be to ensure that any tax liability arising for a resident of the other State may only occur in a manner consistent with the treaty provisions.

Article 8 Shipping and Air Transport

See treaty text

Follows the standard OECD Model provision regarding the place of taxation.

No express requirement for taxation of profits relating to boats engaged in inland waterways transport only in the State in which the place of effective management is situated.

The treaty follows the standard OECD Model provision regarding the place of taxation (i.e. only in the State in which the place of effective management of the enterprise is situated).

The treaty also follows the common approach in Mauritius' treaties of omitting the provisions dealing with the tax treatment of profits from inland waterways transport.

Article 9 Associated Enterprises

See treaty text

Usual OECD provisions regarding transfer pricing

Arm's length principle applies in dealings between associated enterprises

Initial adjustment in accordance with the arm's length principle

The treaty contains no paragraph providing for secondary adjustments

The treaty adopts the standard OECD Model paragraph regarding the application of the arm's length principle to associated enterprises.
However, the treaty omits the second paragraph of the OECD Model, which provides for a secondary adjustment to be made by the other Contracting State following the initial adjustment in accordance with the first paragraph. This means that relief for any double taxation arising as a result of the initial adjustment may have to be obtained in accordance with the mutual agreement procedure.

Article 10 Dividends

See treaty text

Treaty rate: 10 per cent if the beneficial owner is a company which controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends;
15% in all other cases
Domestic rates:

UK

The UK does not impose withholding taxes on dividend payments by UK-resident companies other than dividends paid by Real Estate Investment Trusts, which are subject to a withholding tax at a rate of 20%. UK resident individuals are entitled to a tax credit equivalent to one-ninth of the amount of the dividend, which can be set against any tax liability in the UK on the dividend, but which is not repayable in the event that the recipient is not liable to tax.
UK domestic legislation provides that where a treaty grants a non-resident the right to a tax credit and also allows the UK to charge withholding tax on dividends, the withholding provisions shall only have effect to reduce the amount of the tax credit to nil.
Since 2009, the majority of dividends, whether domestic or foreign, have been exempted from corporation tax in the hands of UK-resident companies. UK resident individuals will be taxed on dividends received from domestic and foreign companies, but in the majority of cases will be able to claim the one-ninth credit referred to above.

Mauritius

Mauritius imposes no tax on dividend payments by Mauritius-resident companies.

Expert Analysis

UK

Although the treaty permits a Mauritian-resident company to claim a one-ninth tax credit on dividends it receives from a UK-resident, this will in practice be eliminated by the “withholding” at the treaty rate, regardless of whether the 10% or the 15% rate applies. The Mauritian shareholder will therefore simply receive the cash dividend without further deduction and without any entitlement to repayment of the additional tax credit.

Mauritius

In view of the full exemption of dividends from taxation under Mauritius' domestic law, the treaty provisions governing the taxation of cross-border dividends are of little practical relevance for non-residents deriving dividend income from Mauritian-resident companies. The provisions provide relief only for Mauritian residents deriving income from the other State, if such income is taxed at a rate higher than what the treaty permits.

Article 11 Interest

See treaty text

Treaty rate: No limit
Domestic rates:

UK

Payments of “yearly interest” arising in the UK made to non-residents are subject to withholding tax at a rate of 20%. Exemptions apply to certain payments made by financial institutions, and payments made on certain listed securities.

Mauritius

Interest payments to non-residents are subject to a final withholding tax at the rate of 15% of the gross amount.
It appears to be standard treaty practice for Mauritius to include exemptions for income derived by the State or particular State agencies, where the treaty permits source State taxation of such income. Thus, the treaty incorporates a reciprocal tax exemption for interest income derived by the government or its agencies.
The treaty also exempts from tax interest derived and beneficially owned by any bank resident in the other State, which is carrying on a bona fide banking business.

As in the OECD Model, the treaty adopts the permanent establishment exception to the general treaty principle governing the taxation of interest income. However, it also refers to a fixed base used for the performance of independent personal services as a separate exception to the general principle.
The treaty with the United Kingdom is one of the very few treaties concluded by the Mauritius, which includes a specific anti-abuse provision in relation to the payment of interest. Accordingly, the treaty does not apply "if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons." Such provisions, which are targeted at "treaty shopping" arrangements, are now standard in the majority of the UK's treaties. In recent years the UK tax authorities have also taken an increasingly rigorous approach to reviewing the beneficial ownership of interest where the recipient of the interest is under similar obligations to pay over the interest to another person.

Article 12 Royalties

See treaty text
Treaty rate: 15% maximum
Domestic rates:
UK
Withholding tax at a rate of 20% applies to certain specified classes of royalties (such as patent, copyright and design right royalties) and also on other royalties that represent "annual payments" (i.e. regular periodic payments that represent pure income profit in the hands of the recipient). Royalties can be paid under deduction of tax at the Treaty rate where the paying party reasonable believes that a Treaty applies.
Mauritius
Royalty payments to non-residents are subject to a final withholding tax at the rate of 15% of the gross amount.
A number of exemptions are provided under the domestic law for royalties paid to non-residents, notably:

- royalties payable by a corporation that holds a Category 1 or Category 2 Global Business Licence;
- royalties payable by a licensed bank where the royalties are paid out of the gross income the bank derives from its banking transactions with non-resident persons and corporations that hold a Global Business Licence; and
- royalties paid by a trust.

In a marked departure from the OECD Model, which confers exclusive taxing rights upon the State of residence of the recipient, this treaty, as does most of Mauritius' treaties, provides for shared taxation between the source and residence States.
The scope of royalties under the treaty is broader than under the OECD Model, in that it covers payments for the use of, or the right to use:

- tapes and works, recorded for radio and television broadcasting; and
- industrial, commercial or scientific equipment.

As indicated above, the UK tax authorities are increasingly taking a more rigorous and critical approach to assessing the beneficial ownership of royalties where "back to back" obligations are involved. Interestingly, however, this article contains no specific anti-treaty-shopping provision of the kind found in Article 11 in relation to interest.

Article 13 Capital Gains

See treaty text
General rule applies.
The treaty generally follows the OECD provision on this issue, with a few notable deviations.
The treaty provides additionally for gains on movable property pertaining to a fixed base used for the performance of independent personal services, which is subject to the same principle as gains on movable property that is part of the assets of a permanent establishment. This means taxation by the State in which the enterprise or fixed base is situated.
The treaty adopts the OECD Model provision applicable to gains from the alienation of ships and aircraft but omits reference to boats engaged in inland waterways transport.

Like most of Mauritius' treaties, the treaty does not deal specifically with the issue of the tax treatment of shares whose underlying assets consist mainly of immovable property situated in a Contracting State

Capital gains are not taxed in Mauritius, thus making the provisions of the tax treaty on this issue of less practical relevance for non-residents realizing such gains in Mauritius. As in the case of dividends, the treaty provisions are of greater importance to Mauritian residents realizing taxable gains from the other State.

The UK imposes a charge on capital gains arising on assets forming part of a permanent establishment of a non-resident company, or a branch or agency of a non-resident individual. It has not historically imposed a charge on capital gains arising on disposals of real property not forming part of a permanent establishment, although a charge on gains arising to non-resident non-natural persons is expected to be imposed from April 2013. Disposals of any assets by non-residents who were previously resident in the UK will fall into charge if the individual resumes residence in the UK less than 5 complete tax years after having left. This UK charging provision is explicitly preserved by Article 13(5).

Article 14 Independent Personal Services

See treaty text

General UN Model provision applies.

The treaty retains the separate article on the taxation of income of an individual who provides independent personal services. It is based on the earlier OECD Model version, which was modified in 2000 to assimilate the tax treatment of such income with the treatment of business profits.

The tax treatment of such income is similar to that for business profits (i.e. the attribution of income to the fixed base from which the person performs his activities).

The type of services covered by the provision comprise those listed in both the UN Model and the former OECD Model version, that is, including independent scientific, literary, artistic, educational or teaching activities and the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

See treaty text

The general rule applies.

The treaty generally follows the OECD Model. However, it omits reference to the exercise of employment aboard a boat engaged in inland waterways transport.

Article 16 Directors' Fee

See treaty text

The general treaty rule applies. Thus, directors' fees paid by a company resident in one State to a resident of the other State may be taxed in the State of which the company is a resident.

The treaty follows the OECD provision on this issue, which accords the taxing right in relation to directors' fees and other similar payments to the State of which the company paying such fees is a resident. The treaty provision, which is followed in virtually all of Mauritius' treaties so far concluded, is consistent with Mauritius' domestic tax practice, which treats directors' fees as having been derived from a Mauritius source if the paying company is a resident of Mauritius, whether the services are performed in, or from outside, Mauritius. The UK taxes directors' fees in the same fashion as employment income, meaning that non-residents will be taxed in the UK in respect of earnings from duties performed in the UK. The effect of this Article is to preserve this charge on fees payable to directors who attend meetings in the UK but who are not otherwise employed in the UK or in the UK for any sustained period of time.

Article 17 Artistes and Athletes

See treaty text

General rule applies.

Following the OECD Model provision on this issue, the treaty adopts the exception to the general provisions governing the exercise of taxing rights in relation to business and employment income, where such income is derived by visiting artistes and sportspersons from their activities in the host State. In such cases, it is accepted that the State from which the income is derived (i.e. the host State) is entitled to tax such income without limits.

Furthermore, the host State's taxing right in relation to the income derived by the artiste or sportsperson is not affected by the fact that the income accrues to another person and not directly to the artiste or sportsperson as such. Thus, the income would still be taxable by the host State

regardless, for example, of the residence status of such other person. In all of the above cases, it is up to the host State to determine the manner in which to exercise its taxing right.

Article 18 Pensions

See treaty text

Exclusive taxation by the State of residence of the recipient

Definition of the term “annuity”.

The treaty follows the OECD Model provision governing the taxation of pensions and similar remuneration relating to past employment, as well as annuities. This means that, in principle, exclusive taxing rights in respect of such income is exercisable by the State of which the recipient is a resident, subject to the treaty provision governing government pensions.

Furthermore, the treaty includes a definition of the term “annuity”, as referring to “a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.”

Article 19 Government Functions

See treaty text

OECD Model provision generally followed.

In accordance with the OECD Model provision on this issue, remuneration for services rendered by an individual to a government, its political subdivision or local authority, as well as pensions paid by, or out of funds created by, such entities, is taxable only by the State to which the services are rendered.

Again, following the OECD Model provision, the treaty provides alternatively for the exclusive taxation of such payments by the other Contracting State if the services are rendered to that other State by an individual who is a national of that State without being a national of the other.

Finally, payments made for services performed by the individual in connection with a business carried on by any of the above entities will not be subject to the principles stated above but may instead be treated in accordance with the other specific treaty provisions, depending on the characterization of the payments. These provisions include, in particular, those governing wages and salaries, directors' fees, income derived by artistes and sportsmen, and pensions.

Note that the principles governing the treatment of payments for services rendered to a government in a diplomatic or consular capacity supersede the above provisions. Thus, the above provisions generally cover cases which fall outside the rules governing the tax treatment of diplomats and consular agents.

Article 20 Students

See treaty text

General rule applies.

An individual who is temporarily present solely as a student at a university, college, school or other similar recognised educational institution, or as a business or technical apprentice is exempt from taxation on the following payments:

- payments received from a foreign source for the purpose of his maintenance, education or training;

- remuneration, not exceeding in any calendar year 1,000 pounds sterling or the equivalent of that amount in Mauritian rupees, derived in any fiscal year from services rendered in that State (but excluding services rendered by a business or technical apprentice to the person or partnership to whom he is apprenticed) for the purpose of supplementing his resources for a duration not exceeding 5 consecutive years of assessment.

Article 21 Teachers

See treaty text

Exemption on remuneration from teaching or research activities conducted in the host State.

An individual normally resident in one State may visit the other State for a period of up to two years in order to teach or carry on research in a university, college, school or other recognized educational institution.

The remuneration derived from such activities is exempt from taxation in the host State.

To benefit from such tax treatment, the visit must be at the invitation of the government or hosting institution.

However, the treaty provision does not apply if the activity is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

Article 22 Income Not Expressly Mentioned

See treaty text
Taxation only in the State of residence where the person is subject to tax in that State on such income.
The treaty follows the standard OECD Model provision, which assigns exclusive jurisdiction to tax such income to the State of residence. However, it makes it subject to the condition that the person is subject to tax in that State.
The treaty also adopts the standard OECD Model provision regarding the exception to the jurisdictional principle stated above, where the income is associated with the activity of a permanent establishment which the resident deriving the income has in the other Contracting State, in which case it is to be treated as taxable in accordance with the treaty provisions governing business profits. Under the treaty, a similar exception exists for income associated with a fixed base from which the resident performs independent personal services. In such a case, the taxation of the income will be governed by the treaty provisions pertaining to income from independent personal services (i.e. Article 14).

Article 23 Limitation of Relief

See treaty text
Individuals who are resident but not domiciled in the UK are able to take advantage of the remittance basis of taxation, whereby certain classes of income and capital gains deriving from a source outside the UK is not taxed unless or until it is remitted to the UK. In order to avoid any such income going entirely untaxed, the treaty incorporates a provision commonly found in the UK's treaties, which provides that such taxpayers may not claim the benefit of the treaty in respect of any income to which the remittance basis applies unless it is in fact remitted (and thus taxed) in the UK.
This article does not seem to limit the application of the treaty to capital gains taxed on a remittance basis: possibly because Mauritius does not tax capital gains in any event.

Article 24 Elimination of Double Taxation

See treaty text
UK
Credit method
Tax sparing credit
Mauritius
Credit method
Under Mauritius' domestic tax law, unilateral double taxation relief in the form of an ordinary credit is available for foreign-source income that has been subject to tax abroad. The relief will be granted only where the income is taxable in Mauritius and the foreign tax is of a similar character to Mauritius tax. The amount of taxable income in respect of which relief is granted is computed without reference to the foreign tax paid nor, in the case of foreign-sourced dividends, the underlying tax paid on the corporate profits out of which the dividend is distributed. However, the credit relief granted will include an underlying tax on the profits out of which the dividend is paid, in cases where the Mauritian resident receiving the income owns directly or indirectly at least 5% of the share capital of the paying company.
While a few of Mauritius' treaties maintain this minimum threshold of 5%, others do not provide specifically for an underlying foreign tax credit, and many others increase this minimum shareholding to 10% mostly in the case of corporate shareholders. In such cases, the unilateral relief mechanism is rendered more favourable than under the treaty.
To ensure that the tax incentives granted to attract non-resident investors for the purposes of economic development inure to the benefit of the investors and not the treasuries of their home countries, it appears to be standard Mauritian tax treaty practice to negotiate tax sparing provisions of a unilateral or reciprocal nature in its treaties with other countries. These provisions treat as paid in Mauritius the tax that is reduced or exempt in Mauritius on the Mauritian-source income derived by the foreign resident. The tax sparing provision enables the foreign resident to claim a credit in the home country for such taxes even if they are not actually paid. It ensures that the investor is the direct beneficiary of the incentive as intended, and not the treasury of its home country, which, depending on the double taxation relief mechanism it applies, may otherwise realize increased revenue collection from the taxes foregone in Mauritius.
In line with this policy, this treaty provides for the reciprocal grant of tax sparing credit in respect of designated taxes foregone in Mauritius, for a period of 10 years, unless specifically extended. However, because most tax incentives in Mauritius have been abolished with effect from 1 July 2006, the impact of the tax sparing provision on Mauritian source taxes is not as significant now as it was before.

In the UK, credit relief is available by way of unilateral relief for foreign withholding taxes and, where the shareholder is a corporate shareholder holding at least 10% of the voting power in the company paying the dividend, for the underlying tax on the profits out of which the dividend is paid. This position is largely replicated in the majority of the UK's tax treaties.
From 1 July 2009, the majority of dividends are exempted from tax in the hands of a UK resident recipient company. Credit relief remains available for individuals, and for companies where the dividend remains taxable, or where the company elects for the dividend to be treated as taxable.

Article 25 Personal Allowances

See treaty text

The article provides for personal tax allowances, reliefs and reductions to be available to non-residents on the same basis as residents, save where the non-resident's income in the other contracting state consists solely of dividends, interest or royalties which suffer deduction of tax at source.
This provision is thus only likely to be of practical relevance to persons trading in the other contracting state through a permanent establishment.

Article 26 Non-Discrimination

See treaty text

The standard provisions apply
The treaty makes no express provision for stateless persons
The majority of Mauritius' treaties do not extend the treaty benefits to stateless persons, and this treaty is no exception.
Unlike most other treaties concluded by Mauritius, this treaty follows the standard OECD provision by extending the application of the provision to all types of taxes and not only those specifically covered by the treaty.

Article 27 Mutual Agreement Procedure

See treaty text

General rules apply
No provision is made for the settlement of unresolved issues through arbitration
The treaty generally follows the OECD Model provision on this issue, except in relation to the settlement of unresolved issues through arbitration, regarding which the treaty omits the Model provision.
Although there is no explicit official statement to this effect, it appears that it is not yet Mauritius' position to negotiate the inclusion of arbitration provisions in its tax treaties. Consequently, virtually none of its existing treaties includes this provision. By contrast, a number of recent UK treaties have included arbitration provisions.

Article 28 Exchange of Information

See treaty text

The treaty follows the current OECD standards governing information exchange between Contracting States
The treaty follows the current standards governing information exchange between Contracting States, including, in particular:

- the application of the exchange of information provision to, and the use of the information exchanged for the purposes of administering, all taxes imposed on behalf of both States, or of their political subdivisions or local authorities;

- the treatment of the information exchanged under the treaty, particularly the circumstances in which the received information may be shared with other persons or authorities in either State;

- limitations on the information exchange. These include, in particular, the absence of an obligation upon the State parties to go beyond what their internal laws and administrative practice permit; or to disregard the principle of reciprocity by providing information which is not obtainable under the laws or in the normal course of the administration of the requesting State; or to exchange information that would disclose a trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy;

- the supply of information by a requested State even where it does not need such information for its own domestic tax purposes; and

• the obligation of a requested State to supply information held by banks, financial institutions, nominees, agents or fiduciaries.

Mauritius has embarked upon the negotiation of specific tax information exchange agreements containing elaborate mechanisms for information exchange, particularly with countries with which it has not as yet concluded a comprehensive double taxation treaty. The UK has similarly sought to update its treaties in recent years to reflect the developing OECD standard.

Article 29 Diplomats

See treaty text

The treaty follows the standard OECD Model approach toward the treatment of diplomatic and consular staff

Mauritius has acceded to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, both of which exempt diplomatic agents, as well as consular officers and consular employees and members of their families, from all taxes in the receiving state, subject to certain limited exceptions. Even in the absence of a treaty, Mauritius income tax law exempts from tax the emoluments of a foreigner who holds office in Mauritius as an official of a foreign government and is posted to Mauritius for that purpose.

UK domestic law exempts from income tax any income arising from the office of consul of a foreign state. The income of other consular staff and official agents is similarly exempted, provided the individual is neither a Commonwealth nor an Irish citizen and the income is not attributable to a trade, business or similar undertaking carried on for a profit. This can be extended under the terms of reciprocal agreements with foreign states.

Article 30 Entry into Force

See treaty text

This Article contains the rules for bringing the treaty into force and giving effect to its provisions.

Article 31 Termination

See treaty text

The treaty remains in force indefinitely until terminated by one of the States, but only after 1986. The termination procedure requires the State initiating the process to give the other State advance notification through diplomatic channels.